

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EASTERN DIVISION

2004 JUL 29 P 12:34  
CIVIL ACTION NO. 04-CV-10203 PBS

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY  
Plaintiff

v.

ADP MARSHALL, INC., a FLUOR DANIEL  
COMPANY and FIREMAN'S FUND  
INSURANCE COMPANY  
Defendants

v.

ALLIED CONSULTING ENGINEERING  
SERVICES, INC., ANDOVER CONTROLS  
CORPORATION, R&R WINDOW  
CONTRACTORS, INC., and DELTA  
KEYSPAN, INC. n/k/a DELTA  
KEYSPAN, LLC  
Third-Party Defendants

ANSWER OF THIRD-PARTY DEFENDANT,  
ST. PAUL TRAVELERS COMPANY  
TO THE FIRST AMENDED THIRD-PARTY COMPLAINT

The third-party defendant, St. Paul Travelers Company ("SPT"), hereby answers the First Amended Third Party Complaint ("Third Party Complaint").

1. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Third Party Complaint.

2. SPT admits the allegation contained in paragraph 2 of the Third Party Complaint.

3. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Third Party Complaint.

4. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Third Party Complaint.

5. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Third Party Complaint.

6. SPT admits the allegation contained in paragraph 6 of the Third Party Complaint.

7. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Third Party Complaint.

8. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Third Party Complaint.

9. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Third Party Complaint.

10. SPT admits the allegation contained in paragraph 10 of the Third Party Complaint.

11. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Third Party Complaint.

12. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Third Party Complaint.

13. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Third Party Complaint.

14. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Third Party Complaint.

15. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Third Party Complaint.

16. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Third Party Complaint.

17. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Third Party Complaint.

18. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Third Party Complaint.

19. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Third Party Complaint.

20. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Third Party Complaint.

21. SPT admits that there is a contract between Delta and ADPM and that the document speaks for itself.

22. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of the Third Party Complaint.

23. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Third Party Complaint.

24. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the Third Party Complaint.

25. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the Third Party Complaint.

26. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the Third Party Complaint.

27. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the Third Party Complaint.

28. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Third Party Complaint.

29. To the extent that the allegations set forth in paragraph 19 of the Third Party Complaint pertain to Delta, SPT admits that Delta refused to indemnify and defend ADP because such an obligation is not yet required. SPT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 29 of the Third Party Complaint.

COUNT I  
(Breach of Contract – Delta Keyspan)

30. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 29 of the Third Party Complaint as if set forth fully herein.

31. SPT denies the allegations set forth in paragraph 31 of the Third Party Complaint.

32. SPT denies the allegations set forth in paragraph 32 of the Third Party Complaint.

COUNT II  
(Breach of Contract – R&R)

33. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 33 of the Third Party Complaint as if set forth fully herein.

34. The allegations set forth in paragraph 34 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

35. Allegations set forth in paragraph 35 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT III  
(Breach of Contract – Andover Controls)

36. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 35 of the Third Party Complaint as if set forth fully herein.

37. The allegations set forth in paragraph 37 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

38. The allegations set forth in paragraph 38 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT IV

(Breach of Contract – Allied Consulting)

39. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 38 of the Third Party Complaint as if set forth fully herein.

40. The allegations set forth in paragraph 40 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

41. The allegations set forth in paragraph 41 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT V

(Indemnification and Contribution – Delta Keyspan)

42. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 41 of the Third Party Complaint as if set forth fully herein.

43. The allegations set forth in paragraph 43 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT VI

(Indemnification and Contribution – R&R)

44. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 43 of the Third Party Complaint as if set forth fully herein.

45. The allegations set forth in paragraph 45 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT VII

(Indemnification and Contribution – Andover Controls)

46. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 45 of the Third Party Complaint as if set forth fully herein.

47. SPT denies the allegations set forth in paragraph 47 of the Third Party Complaint.

COUNT VIII

(Indemnification and Contribution – Allied Consulting)

48. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 47 of the Third Party Complaint as if set forth fully herein.

49. The allegations set forth in paragraph 49 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT IX

(Breach of Contract – Maddison Associates, Inc.)

50. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 49 of the Third Party Complaint as if set forth fully herein.

51. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 of the Third Party Complaint.



52. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of the Third Party Complaint.

53. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the Third Party Complaint.

54. The allegations set forth in paragraph 54 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

55. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the Third Party Complaint.

56. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 56 of the Third Party Complaint.

57. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of the Third Party Complaint.

58. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the Third Party Complaint.

59. The allegations set forth in paragraph 59 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

60. The allegations set forth in paragraph 60 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT X

(Indemnification and Contribution – Maddison Associates, Inc.)

61. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 60 of the Third Party Complaint as if set forth fully herein.

62. The allegations set forth in paragraph 62 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT XI

(Performance Bond – United States Fidelity and Guaranty Company)

63. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 62 of the Third Party Complaint as if set forth fully herein.

64. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 of the Third Party Complaint.

65. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 65 of the Third Party Complaint.

66. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 66 of the Third Party Complaint.

67. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the Third Party Complaint.

68. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 68 of the Third Party Complaint.

69. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 69 of the Third Party Complaint.

70. The allegations set forth in paragraph 70 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

#### COUNT XII

(Performance Bond – Fidelity and Deposit Company)

71. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 70 of the Third Party Complaint as if set forth fully herein.

72. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 72 of the Third Party Complaint.

73. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 73 of the Third Party Complaint.

74. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 74 of the Third Party Complaint.

75. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 75 of the Third Party Complaint.

76. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 76 of the Third Party Complaint.

77. The allegations set forth in paragraph 77 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

COUNT XIII  
(Performance Bond – National Grange Mutual)

78. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 77 of the Third Party Complaint as if set forth fully herein.

79. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 79 of the Third Party Complaint.

80. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 80 of the Third Party Complaint.

81. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 81 of the Third Party Complaint.

82. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 82 of the Third Party Complaint.

83. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 83 of the Third Party Complaint.

84. The allegations set forth in paragraph 84 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

#### COUNT XIV

(Performance Bond – Travelers Casualty and Surety Company)

85. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 84 of the Third Party Complaint as if set forth fully herein.

86. SPT admits that it is authorized to do business in the Commonwealth of Massachusetts.

87. SPT admits that it provided a performance bond.

88. SPT admits that MDFA produced an expert report. The remaining allegations are denied.

89. SPT admits that it issued a bond and that the bond speaks for itself.

90. SPT denies the allegations set forth in paragraph 90 of the Third Party Complaint.

91. SPT denies the allegations set forth in paragraph 91 of the Third Party Complaint.

COUNT XV

(Performance Bond – American Home Assurance Company)

92. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 91 of the Third Party Complaint as if set forth fully herein.

93. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 93 of the Third Party Complaint.

94. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 94 of the Third Party Complaint.

95. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 95 of the Third Party Complaint.

96. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 96 of the Third Party Complaint.

97. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 97 of the Third Party Complaint.

98. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 98 of the Third Party Complaint.

COUNT XVI

(Breach of Contract – Hartford Roofing Company, Inc.)

99. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 98 of the Third Party Complaint as if set forth fully herein.

100. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 100 of the Third Party Complaint.

101. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 101 of the Third Party Complaint.

102. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 102 of the Third Party Complaint.

103. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 103 of the Third Party Complaint.

104. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 104 of the Third Party Complaint.

105. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 105 of the Third Party Complaint.

106. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 106 of the Third Party Complaint.

107. The allegations set forth in paragraph 107 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

108. The allegations set forth in paragraph 108 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

#### COUNT XVII

(Indemnification and Contribution – Hartford Roofing Co., Inc.)

109. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 108 of the Third Party Complaint as if set forth fully herein.

110. The allegations set forth in paragraph 110 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.



COUNT XVIII

(Breach of Contract – Spagnolo/Gisness Associates, Inc.)

111. SPT repeats and incorporates by reference its responses to the allegations set forth in paragraphs 1 through 110 of the Third Party Complaint as if set forth fully herein.

112. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 112 of the Third Party Complaint.

113. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 113 of the Third Party Complaint.

114. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 114 of the Third Party Complaint.

115. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 115 of the Third Party Complaint.

116. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 116 of the Third Party Complaint.

117. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 117 of the Third Party Complaint.

118. SPT is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 118 of the Third Party Complaint.

119. The allegations set forth in paragraph 119 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

120. The allegations set forth in paragraph 120 of the Third Party Complaint do not pertain to SPT and, as such, SPT offers no response.

#### AFFIRMATIVE DEFENSE

##### FIRST AFFIRMATIVE DEFENSE

The Third Party Complaint fails to state a claim.

##### SECOND AFFIRMATIVE DEFENSE

The damages alleged in the Third Party Complaint are the result of acts and/or omissions of parties for whom SPT and/or Delta were not legally responsible and, therefore, SPT is not liable to ADP.

##### THIRD AFFIRMATIVE DEFENSE

ADP's claims against SPT are barred by the terms and provisions of the subcontract between ADP and Delta.

WHEREFORE, SPT respectfully requests that this Court dismiss the Third Party Complaint as it pertains to SPT and award SPT its costs and attorneys' fees.

Respectfully submitted,

ST. PAUL TRAVELERS COMPANY  
By its attorneys,

  
\_\_\_\_\_  
William E. O'Gara, Esq. (BBO# 555256)  
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CERTIFICATION

I hereby certify that I have mailed a copy of the within first class mail,  
postage prepaid on 27th day of July, 2004 to the following:

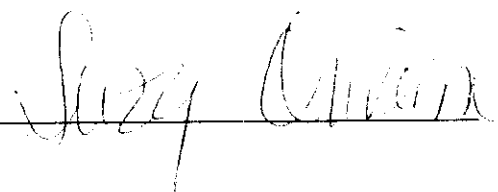
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